

Small Business Administration

§ 115.63

(b) *Conditions for reinstatement.* At any time after a Principal becomes ineligible for further bond guarantees under §115.14(a), the Surety may recommend that such Principal's eligibility be reinstated. OSG may agree to reinstate the Principal and its Affiliates if:

(1) The Principal's guarantee fee has been paid to SBA and SBA receives evidence that the Principal has paid all delinquent amounts due to the Surety (including amounts for Imminent Breach); or

(2) The Surety has settled its claim with the Principal for an amount and on terms accepted by OSG; or

(3) The Principal contests a claim and provides collateral, acceptable to the Surety and OSG, which has a liquidation value of at least the amount of the claim including related expenses; or

(4) The Principal's indebtedness to the Surety is discharged by operation of law (e.g., bankruptcy discharge); or

(5) OSG and the Surety determine that further bond guarantees are appropriate.

(c) *Underwriting after reinstatement.* A guarantee application submitted after reinstatement of the Principal's eligibility is subject to a very stringent underwriting review.

Subpart C—Preferred Surety Bond (PSB) Guarantees

§ 115.60 Selection and admission of PSB Sureties.

(a) *Selection of PSB Sureties.* SBA's selection of PSB Sureties will be guided by, but not limited to, these factors:

(1) An underwriting limitation of at least \$2,000,000 on the U.S. Treasury Department list of acceptable sureties;

(2) An agreement to charge Principals no more than the Surety Association of America's advisory premium rates in effect on August 1, 1987;

(3) Premium income from contract bonds guaranteed by any government agency (Federal, State or local) of no more than one-quarter of the total contract bond premium income of the Surety;

(4) The vesting of underwriting authority for SBA guaranteed bonds only in employees of the Surety;

(5) The vesting of final settlement authority for claims and recovery under the PSB program only in employees of the Surety's permanent claims department; and

(6) The rating or ranking designations assigned to the Surety by recognized authority.

(b) *Admission of PSB Sureties.* A Surety admitted to the PSB program must execute a PSB Agreement before approving SBA guaranteed bonds. No SBA guarantee attaches to bonds approved before the AA/SG or designee has countersigned the Agreement.

[61 FR 3271, Jan. 31, 1996, as amended at 66 FR 30804, June 8, 2001]

§ 115.61 Duration of PSB program.

The PSB program terminates on September 30, 2003, unless extended by legislation. SBA guarantees effective under this program on or before September 30, 2003, will remain in effect after such date.

[61 FR 3271, Jan. 31, 1996, as amended at 63 FR 12605, Mar. 16, 1998; 66 FR 30804, June 8, 2001]

§ 115.62 Prohibition on participation in Prior Approval program.

Neither a PSB Surety nor any of its Affiliates is eligible to submit applications under subpart B of this part.

§ 115.63 Allotment of guarantee authority.

(a) *General.* SBA allots to each PSB Surety a periodic maximum guarantee authority. No SBA guarantee attaches to bonds approved by a PSB Surety if the bonds exceed the allotted authority for the period in which the bonds are approved. No reliance on future authority is permitted. An allotment can be increased only by prior written permission of SBA.

(b) *Execution of Bid Bonds.* When the PSB Surety Executes a Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the estimated penal sum of the Final Bond SBA would guarantee if the Contract were awarded. If the Contract is then awarded for an amount other than the bid amount, or if the bid is withdrawn or the Bid Bond guarantee has expired (see §115.12(c)), SBA

debits or credits the Surety's allotment accordingly.

(c) *Execution of Final Bonds.* If the PSB Surety Executes a guaranteed Final Bond, but not the related Bid Bond, SBA debits the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the Final Bond. SBA will debit the allotment for increases, and credit the allotment for decreases, in the bond amount.

(d) *Release and non-issuance of Final Bonds.* The release of Final Bonds upon completion of the Contract does not restore the corresponding allotment. If, however, a PSB Surety approves a Final Bond but never issues the bond, SBA will credit the Surety's allotment for an amount equal to the guarantee percentage of the penal sum of the bond. In that event, the Surety must notify SBA as soon as possible, but in no event later than 5 business days after the non-issuance has been determined. Until the Surety has so notified SBA, it cannot rely on such credit.

§ 115.64 Timeliness requirement.

There must be no Execution or approval of a bond by a PSB Surety after commencement of work under a Contract unless the Surety obtains written approval from the AA/SG. To apply for such approval, the Surety must submit a completed "Surety Bond Guarantee Agreement Addendum" (SBA Form 991), together with the evidence and certifications described in § 115.19(f)(1)(ii).

§ 115.65 General PSB procedures.

(a) *Retention of information.* A PSB Surety must comply with all applicable SBA regulations and obtain from its applicants all the information and certifications required by SBA. The PSB Surety must document compliance with SBA regulations and retain such certifications in its files, including a contemporaneous record of the date of approval and Execution of each bond. See also § 115.19(f). The certifications and other information must be made available for inspection by SBA or its agents and must be available for submission to SBA in connection with the Surety's claims for reimbursement. The PSB Surety must retain the cer-

tifications and other information for the term of the bond, plus such additional time as may be required to settle any claims of the Surety for reimbursement from SBA and to attempt salvage or other recovery, plus an additional 3 years. If there are any unresolved audit findings in relation to a particular bond, the Surety must maintain the related certifications and other information until the findings are resolved.

(b) *Usual staff and procedures.* The approval, Execution and administration by a PSB Surety of SBA guaranteed bonds must be handled in the same manner and with the same staff as the Surety's activity outside the PSB program. The Surety must request job status reports from Obligees in accordance with its own procedures.

(c) *Notification to SBA.* (1) *Approvals.* A PSB Surety must notify SBA by electronic transmission or monthly bordereau, as agreed between the Surety and SBA, of all approved Bid and Final Bonds, and of the Surety's approval of increases and decreases in the Contract or bond amount. The notice must contain the information specified from time to time in agreements between the Surety and SBA. SBA may deny liability with respect to Final Bonds for which SBA has not received timely notice.

(2) *Other events requiring notification.* The PSB Surety must notify SBA within 30 calendar days of the name and address of any Principal against whom legal action on the bond has been instituted; whenever an Obligee has declared a default; whenever the Surety has established or added to a claim reserve; of the recovery of any amounts on the guaranteed bond; and of any decision by the Surety to bond any such Principal again.

§ 115.66 Fees.

The PSB Surety must pay SBA a certain percentage of the Premium it charges on Final Bonds. The PSB Surety must also remit to SBA the Principal's payment for its guarantee fee, equal to a certain percentage of the Contract amount. The fee percentages are determined by SBA and are published in Notices in the FEDERAL REGISTER from time to time. Each fee is